HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 596 of 2006 (MS)

Smt. Vimla Bohra,
W/o Shri Satyapal,
R/o Municipal Quarter No. 5,
Near Pashu Chikitsalaya,
Shravan Nath Nagar,
Haridwar,
Tehsil & District-Haridwar. ..... Petitioners

Versus

1. Prescribed Authority/S.D.M. Haridwar, Tehsil & District-Haridwar.
2. Nagar Palika Parishad, Haridwar, Tehsil & District – Haridwar, through its Executive Officer.

..... Respondents

Sri Alok Singh, Sr. Advocate assisted by Sri D. Barthwal for the petitioners
Sri Pankaj Miglanai, Advocate for the respondent no.2.
Standing Counsel for the respondent no. 1.

Dated: 18.5.2006

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 27.1.2006 passed by the Prescribed Authority, Haridwar.

Briefly stated, proceedings under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, were initiated by the respondent no. 2 against the petitioner. During the proceedings of the case petitioner has filed an application under section 8(b)(c) of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The application was rejected vide order dated 27.1.2006.

Section 8 reads as under:

"*The prescribed authority and the appellate officer shall for the purpose of holding any inquiry or hearing any appeal under this Act, have the same power as are vested in a civil*

court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which may be prescribed."

The prescribed authority has held that since the tenancy has already been terminated, therefore, the possession of the petitioners is unauthorized. However, the prescribed authority has observed that the petitioner has not disclosed in what manner they wanted to prove their right over the property in dispute, only then Nagar Palika Parishad will be able to file documentary evidence.

It is settled law that technicalities of law should not come in the way of dispensation of justice.

The Apex Court in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** has held as under:-

"*Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.*"

Liberty is given to both the parties to adduce their evidence. The prescribed authority shall permit both the parties to lead the evidence in support of their cases.

Subject to the observation, writ petition is disposed of.

(Rajesh Tandon, J.)

18.05.2006
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